

June 10, 2009

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TOWN OF NEW WINDSOR

PLANNING BOARD

JUNE 10, 2009

MEMBERS PRESENT: JERRY ARGENIO, CHAIRMAN  
NEIL SCHLESINGER  
HOWARD BROWN  
DANIEL GALLAGHER  
HENRY SCHEIBLE

ALSO PRESENT: MARK EDSALL, P.E.  
PLANNING BOARD ENGINEER

JENNIFER GALLAGHER  
BUILDING INSPECTOR

NICOLE JULIAN  
PLANNING BOARD SECRETARY

DOMINIC CORDISCO, ESQ.  
PLANNING BOARD ATTORNEY

ABSENT: HENRY VAN LEEUWEN

REGULAR\_MEETING

MR. ARGENIO: I'd like to call to order the June 10,  
2009 meeting of the Town of New Windsor Planning Board.  
Please stand for the Pledge of Allegiance.

(Whereupon, the Pledge of Allegiance was  
recited).

MR. ARGENIO: I asked Neil to join me up here. Mr. VanLeeuwen is away for summer holiday. Also Mr. Scheible is here with us, I asked him to come up as well.

APPROVAL\_OF\_MINUTES\_DATED\_APRIL\_29,\_2009

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MR. ARGENIO: Approval of the April 29, 2009 meeting minutes sent out via e-mail on May 5. Anybody sees fit, I'll accept a motion that we accept them as written.

MR. BROWN: So moved.

MR. SCHEIBLE: Second it.

MR. ARGENIO: Motion made and seconded that we accept the minutes from the April 29, 2009 meeting as written. Roll call.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BROWN	AYE
MR. SCHLESINGER	AYE
MR. GALLAGHER	AYE
MR. ARGENIO	AYE

ANNUAL\_MOBILE\_HOME\_PARK\_REVIEW:

HUDSON\_VIEW\_PARK

MR. ARGENIO: Hudson View Mobile Home Park. Somebody here to represent this? Ma'am, can I have your name?

MS. CORNELL: My name is June Cornell.

MR. ARGENIO: And you're not the owner of the park?

MS. CORNELL: No, I'm not.

MR. ARGENIO: And the owner of the park is?

MS. CORNELL: Dorothy Toback.

MR. ARGENIO: Mrs. Toback. Okay, we're going to give you some commentary, Mrs. Cornell, about your trailer park, I understand that there are some issues at the trailer park that are outstanding and I hope you'll relay them to Mrs. Toback.

MS. CORNELL: Yes.

MR. ARGENIO: Jen, do you have some comments on this?

MS. GALLAGHER: I believe you have all of the violations.

MR. ARGENIO: Give it to me in phonetic form, essentially.

MS. GALLAGHER: There's high grass issues, there's rubbish issues, there's condemned trailers that are going to need to be removed.

MR. ARGENIO: Miss Cornell, this was brought to my attention these issues a few weeks ago, so I had Nicole pull the file for your, for Mrs. Toback's trailer park,

what's in here is the approval of your renewals, all of her renewals of the special use permit. And I went through this pretty thoroughly and I'm sharing with you guys too just to update you guys and I'm going to make a proposal what I think we should do, I see a pattern here with this trailer park, this mobile home park I should say and the pattern I see here, you see my flags on here?

MS. CORNELL: Yes.

MR. ARGENIO: The pattern I see is that going back to around 2004 and prior 1999 to about 2004 when Mr. Babcock was reporting on the trailer parks when he was the building inspector there was different problems that came up and then if you see these flags on this side from 2004 to date there essentially have been no problems with the renewal. What I understand for the benefit of the other members, the fire inspector has written some violations, pass these around if you guys care to see them and I will just summarize it. Essentially, the place needs to be cleaned up, the space between the trailers is cluttered with debris which represents a fire hazard in case people had to escape from the trailer in the event of a fire or if firemen had to come in and put out a fire. Do you have a copy of the notices?

MS. CORNELL: Yes, we have the pictures too.

MR. ARGENIO: And you do have a copy of the fire inspector's formal notice?

MS. CORNELL: Yes, she does.

MR. ARGENIO: Here's what I'm going to propose for the benefit of the members for their consideration. This park, this mobile home park is not in nearly as bad a shape as the last one that we had to deal with, you guys remember a few months ago, essentially, this needs

to be cleaned up, it needs to be made safe, we don't have meter pans laying in the water puddles, we don't have raw sewage running across the ground. What I'd like to propose or if you want to make another suggestion I want to give Mrs. Toback a month to get this cleaned out and bring her back in or bring Mrs. Cornell back in, I would assume.

MS. CORNELL: Yes.

MR. ARGENIO: To renew their one year operating permit. Danny, what do you think about that?

MR. GALLAGHER: I have no problem with that.

MR. SCHEIBLE: No problem.

MR. SCHLESINGER: I have no problem with it. I don't think that next year we should have to deal with this as it is today.

MR. ARGENIO: As I said, Neil, it seems to me I went through this whole file and there was some problems quite a few years ago, they have been, it's been I'm not going to say a model home park but Mike Babcock has had very few comments on this over the past four or five years but you need to do it, Miss Cornell, please tell Mrs. Toback that we'd like to see the park brought up to the standards that we expect and we're certainly not requesting that every unit be painted, we're not requesting that it needs to be made safe and some of the rubbish needs to be cleaned up, knock down some of the high grass and certainly satisfy the violations that were written by the fire inspector.

MS. CORNELL: Yes.

MR. ARGENIO: So do you think that this could be done within a month or thereabouts?

MS. CORNELL: They're working on it right now, most of those are being worked on as far as the condemned trailer, it's gone, at least that's gone, that was taken out the so these are being worked on.

MR. ARGENIO: Great, well, let's to do that, let's say a month, Nicole, put it on the agenda, contact Mrs. Cornell, tell her when she's back on. Jen, let's get somebody out to take a look around and you guys have the ability to do it right, I certainly know that we just need to get it buttoned up and that would be very helpful. Okay, Mrs. Cornell, thank you very much for coming in. You hold onto that.

MS. GALLAGHER: Next month when you come in.

MS. CORNELL: Are you going to give her a notice?

MS. JULIAN: I will.

MR. ARGENIO: And Jen, when we do this check thing make sure there's not a month free out there same as we did with the other guy, make sure we include that month that we lost.

MS. GALLAGHER: Okay.

PARADISE\_MOBILE\_HOME\_PARK

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MR. ARGENIO: Paradise Mobile Home Park, anybody here to represent this? Jen, what say you on Paradise?

MS. GALLAGHER: Somebody from our office has been out there and everything is in order.

MR. ARGENIO: That's refreshing. Can I have your name for the benefit of the stenographer?

MR. MANIX: Ken Manix.

MR. ARGENIO: What's the fees with this?

MS. GALLAGHER: It's \$285.

MR. ARGENIO: Do you have a check made out to the Town of New Windsor for \$285?

MR. MANIX: Yes.

MR. ARGENIO: I'll accept a motion for one year extension for their operating permit.

MR. SCHEIBLE: I'll make that motion.

MR. SCHLESINGER: Second it.

MR. ARGENIO: Motion has been made and seconded that we offer Paradise Mobile Home Park under special use permit. Roll call.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BROWN	AYE
MR. SCHLESINGER	AYE
MR. GALLAGHER	AYE
MR. ARGENIO	AYE

REGULAR\_ITEMS:

LANDS\_OF\_BINKO\_(09-18)

MR. ARGENIO: First regular item Lands of Binko on Beattie Road. This application proposes subdivision of a 2.79 acre parcel into two single family residential lots. The application was reviewed on a concept basis only. Sir, can I have your name for the stenographer and the firm you're with?

MR. EWALD: I'm Travis Ewald from Pietrzak & Pfau.

MR. ARGENIO: What do you have Travis?

MR. EWALD: We have a proposed two lot subdivision on Beattie Road, section 51, block 1, lot 78.2 proposing approximately 2.79 acres, what we'd like to do is subdivide off the rear portion of the lot and provide a 20 foot wide easement from Beattie Road down to the rear lot. Ultimately what we're looking for tonight is referral to the zoning board. The front lot which is lot number 1 we would be creating one new non-conforming bulk requirement and zoning table and that would be the lot area we're under the 80,000 square foot requirement, we're proposing 32,640. The rest of the bulk requirements for lot number 1 are existing conditions which would require a variance under the current zoning. For the rear lot, we're providing the necessary lot area and we meet all the other bulk requirements with the exception of the street frontage and we'd be looking for a variance from the zoning board for that.

MR. ARGENIO: How many feet of street frontage do you have for the rear lot? Looks like the answer is zero.

MR. EWALD: That's the correct answer.

MR. ARGENIO: Dominic?



MR. CORDISCO: Correct.

MR. ARGENIO: How does that work?

MR. CORDISCO: It only works if the zoning board allows it to work, it's a 100 percent variance as far as that's concerned.

MR. EWALD: The other option would be to create a flag lot which is to try to minimize the variance necessary for the front lot, we're proposing not to restrict its street frontage or its lot width.

MR. ARGENIO: What's the size of the lots around you?

MR. EWALD: The lots around me are comparable to what the front proposed lot number 1 is. If you look on the location plan, you can see to the north all the adjacent lots are comparable to the front proposed lot of this project and to the south that lot is a little bit wider but the depth is comparable. But if you count up the three lots to the north are actually slightly narrower, have slightly less street frontage than what we're proposing.

MR. ARGENIO: I don't know what to say, I mean, I find myself speechless, zero road frontage for the back lot you're within a building envelope, I see that and I assume you did perc tests, you have a septic field, is that the case?

MR. EWALD: The perc tests haven't been conducted because we understood that that was, we'd be subject to going to the zoning board and we wanted to limit the expense to our client if indeed we're not referred to the zoning board or if the--

MR. ARGENIO: Does anybody have any comments on this Danny or Neil?

MR. SCHEIBLE: Two very small lots we're making here in the neighborhood.

MR. ARGENIO: I agree.

MR. SCHLESINGER: One's okay, the other one would not be, one's 81,000.

MR. SCHEIBLE: What's the front one?

MR. ARGENIO: Mark, can this be configured in some fashion that more closely matches the zoning, the lawful zoning in the town?

MR. EDSALL: Well, to be honest, the lot in its entirety would not be approvable now because the lot in its entirety has 106 foot front width whereas the lot width in today's standards is 175 so if this lot in its entirety was brought to you for approval as part of a much larger grand scheme this lot alone in its parent parcel form would require a variance.

MR. ARGENIO: So I understand we have a current lot that does not meet zoning.

MR. EDSALL: Now.

MR. ARGENIO: So the applicant's saying okay, I have a lot that doesn't meet zoning but we want to make two more lots that also don't meet zoning.

MR. EDSALL: What's troublesome and again I have no problem with people looking to utilize their land to the best extent practical, what's troubling is this circumvents the private road regulations in that this board never permits the access via easements, they require development of private roads so that you can minimize the curb cuts and provide frontage via a private road which the option to provide a private road

was created so that you could provide frontage for non-town roads. But in this case, if you took 50 foot off the front you'd only be left with a 56 foot lot so that would make it, matter of fact, the road would be into the house so it's just a very small lot, it's basically what you would look at as being a flag lot, a substandard flag lot trying to be split in half.

MR. CORDISCO: If hypothetically speaking this lot number 2 is already created and had no road frontage but yet still didn't have a house on it and they wanted to put a house on it and assuming that, you know, for the moment that lot number 2 already existed even though it doesn't that that still would require a variance, they'd need a 280A variance because they don't have any road frontage for that particular lot. What they're trying and perhaps I think as part of the ZBA referral I think you would need to obtain a 280A variance from the ZBA where you don't have adequate road frontage.

MR. ARGENIO: So we're going to make a recommendation to the zoning board like we typically do?

MR. CORDISCO: Well, they have to be sent over to the zoning board and the application should be deemed incomplete until they come back, if there are concerns about the specific variances that they need, I think that that's part of the record and the transcript could be sent to the zoning board.

MR. ARGENIO: Do you guys have any comments you want to make? Hank? I agree with Dominic.

MR. SCHEIBLE: I just don't agree with what this--

MR. ARGENIO: That doesn't meet zoning to begin with.

MR. SCHEIBLE: Right, so why go any further?

MR. ARGENIO: I agree. Danny?

MR. GALLAGHER: I agree, I think the biggest hurdle is probably going to get the variance for the road frontage, correct, is that going to be the--

MR. ARGENIO: Well, from the requirements.

MR. EDSALL: That and as well creation of a lot with less than half the lot acreage. I don't know what their history is in granting other variances in granting variances of this magnitude after the '82 zoning went into place.

MR. SCHLESINGER: If sometime ago somebody had owned the larger lot which is 81,000 square feet it meets the standard for a buildable lot, wasn't it 80,000?

MR. CORDISCO: The 80,000 would.

MR. SCHLESINGER: So somebody goes to the zoning board and says listen, I've got a lot, it's buildable, I have no access to it, it's 80,000 square feet then I don't know, whatever you said would be what they would request from the zoning board?

MR. CORDISCO: Correct.

MR. SCHLESINGER: It's not the situation here.

MR. SCHEIBLE: It's not the situation.

MR. SCHLESINGER: No, that's not the situation but I was just opening Pandora's Box maybe.

MR. ARGENIO: Okay, zoning board is going to have to handle this and I think the record does accurately reflect the thoughts and sentiments of the planning board that this may not be specifically be in everybody's best interest. That said, you certainly do

have the right to go to the zoning board and make your case. We're not going to go to SEQRA, we're not going to do any of that. Somebody sees fit, I'll accept a motion that we deem this application incomplete at this point.

MR. GALLAGHER: So moved.

MR. SCHLESINGER: Second it.

MR. ARGENIO: Motion has been made and seconded that the Town of New Windsor Planning Board deem the Binko minor subdivision on Beattie Road incomplete. I'll have a roll call.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BROWN	AYE
MR. SCHLESINGER	AYE
MR. GALLAGHER	AYE
MR. ARGENIO	AYE

MR. ARGENIO: You have been duly referred to the zoning board and Dominic, what are the mechanics of getting this into the minutes to the zoning board, what do you have to do, make sure that they make sure that the discussion here tonight is communicated to them?

MR. CORDISCO: I think you can direct Nicole.

MR. ARGENIO: Would you do that please?

MS. JULIAN: Yes.

MR. EDSALL: When I get the referral form over to you just hold on to it until Fran can clip this section and get it to you and just attach on the referral form the minutes.

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MR. ARGENIO: Thank you for coming in.

MR. EWALD: Thank you very much.

CKN\_MYLONAS\_INC.\_-\_SUITE\_202\_RENOVATION\_(09-14)

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MR. ARGENIO: Next item CKN Mylonas Inc. represented by our former colleague, Mr. Minuta. This application proposes modification to the existing apartment building that's the Reis building to the north of the Vails Gate Diner to add a caretaker's apartment. Previously reviewed at the 25 March, 2009, 29 April, 2009 planning board meetings. Joe, can you tell us what you have cleaned up and accomplished since the last time you've been here please?

MR. MINUTA: At the last meeting, the dumpster enclosure was a concern raised by one of the neighbors. The owner has since conceded and said yes, they'll do the dumpster enclosure. In doing so, they have located it so that it's within the compliant distances of the building and utility pole that's there. And some other items to accomplish this we're actually creating an easement since the owner owns both properties he's creating an easement on the back portion of that to allow for the dumpster enclosure. If that's acceptable to the board, we'll be more than happy to run that up the flag pole and get that approved through county.

MR. ARGENIO: The location, I'm reading from Mark's notes, the location appears acceptable from the layout standpoint and however the easement documents should be submitted for review by the attorney for the planning board. If my memory serves me the location is consistent with the area that we discussed last time that you were here. Unless somebody disagrees?

MR. SCHLESINGER: No, that's fine.

MR. ARGENIO: A bond estimate, was there anything else, Joe, I think the dumpster was the big thing.

MR. MINUTA: Dumpster is the only thing we're doing to the site except for restriping, there's nothing else to

be done on the site, really all internal, it's an office building, we're creating a caretaker's apartment.

MR. ARGENIO: Dominic?

MR. CORDISCO: Yes, sir?

MR. ARGENIO: Go ahead, Neil.

MR. SCHLESINGER: Similar situation to the dumpster parking spots 11, 12, 13, 14 and 15, okay, how do you get in and out of those parking spots?

MR. CORDISCO: Question for me or question for the engineer?

MR. ARGENIO: Dominic, the legal question is what Neil said to me was parking spots 11 through 15 if the diner decides to put up a fence on that property line how do they get to those spots?

MR. EDSALL: There is already an easement along the property line.

MR. SCHLESINGER: There's an existing easement there now?

MR. EDSALL: Yes, at the prior meeting, we talked about the fact that if you look at the plan, they don't work but there's a 22 foot point 7 clear area with an easement.

MR. SCHLESINGER: That's fine, okay, I just hope that the family all stays friendly.

MR. EDSALL: That's what the easements do, they protect even if he sells it.

MR. ARGENIO: A bond estimate has been submitted for



this application according to Chapter 137 of the Town Code. Where are we at with SEQRA here?

MR. CORDISCO: I don't believe you took any action previously under SEQRA for this.

MR. ARGENIO: So we need to take a neg dec on this.

MR. CORDISCO: Correct.

MR. ARGENIO: I'll accept a motion for negative dec under CKN Mylonas, if somebody sees it appropriate.

MR. SCHLESINGER: Motion made.

MR. SCHEIBLE: Second it.

MR. ARGENIO: Motion has been made and seconded that the Town of New Windsor Planning Board make a, declare negative dec under the SEQRA review process. If there's no further discussion, roll call.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BROWN	AYE
MR. SCHLESINGER	AYE
MR. GALLAGHER	AYE
MR. ARGENIO	AYE

MR. ARGENIO: I'm going to ask informally the other members, does everybody agree that all the proposed structures, equipment and/or materials are readily accessible for fire and police? That this layout is in harmony with the orderly development of the area and that everybody's aware that the proposed site is adjacent to a residential district and the board has determined that the nature and intensity of the operations, layout and structures heights and landscaping will not be hazardous, inconvenient nor

conflict with the normal traffic of the neighborhood, nor will the project hinder or discourage appropriate development and use of adjacent land and buildings? Am I missing anything?

MR. CORDISCO: I prepared draft resolutions assuming that you're prepared to grant an amended site plan and special use permit.

MR. ARGENIO: I will accept a motion for final approval subject to Mark's comments.

MR. SCHLESINGER: Motion made.

MR. GALLAGHER: Second it.

MR. ARGENIO: Motion has been made and seconded that we offer CKN Mylonas as represented by Mr. Minuta on Route 32 final approval. I'll have a roll call.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BROWN	AYE
MR. SCHLESINGER	AYE
MR. GALLAGHER	AYE
MR. ARGENIO	AYE

MR. ARGENIO: Make sure you move the title block.

MR. EDSALL: No, just put the name in bold.

MR. ARGENIO: Put the name in bold in the title block.

MR. EDSALL: Bring it over, I'll show you.

MR. ARGENIO: Do you agree to do that?

MR. MINUTA: I agree to do that.

GODDARD\_DEVELOPMENT\_-\_PRICE\_CHOPPER\_PLAZA

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Ms. Martina Sprauer and Ms. Donna Goddard appeared before the board for this proposal.

MR. ARGENIO: Mark, do you have something on this?

MR. EDSALL: The applicant is here. This in fact is an issue that was at the planning board work session. I referred it to the board for discussion purposes for a determination as to whether or not an actual application is needed. It is a change of use interior for this building at the Price Chopper Plaza but not, does not involve any improvements outside. So I would defer now to the applicant to explain what they're now proposing and you can make a determination.

MR. ARGENIO: Can I have your name for the record?

MS. SPRAUER: Martina Sprauer.

MS. GODDARD: Donna Goddard from Goddard Development representing VGR Associates.

MS. SPRAUER: This is our temporary brochure.

MR. ARGENIO: Is this Eckert's space?

MS. SPRAUER: Yes.

MR. ARGENIO: Give us a brief description.

MS. SPRAUER: We're going to be having bouncy houses and party rooms, they'll be large open area with all the bouncy houses for kids to just come in for open play and two party rooms to do birthday parties and any other type of parties they'd like.

MR. ARGENIO: Any cooking?

MS. SPRAUER: No, we're going to have all our food from the Italian restaurant that's in the same plaza and have the cakes delivered from Price Chopper.

MR. ARGENIO: The kegs?

MS. SPRAUER: No, cakes, so there will be no, be absolutely no cooking, the food will be delivered at the times of the parties.

MR. ARGENIO: Hang?

MR. SCHEIBLE: Like a Chuck E. Cheese?

MS. SPRAUER: I think Chuck E. Cheese does a little of their own cooking.

MR. ARGENIO: Similar to Arielle's Child over on 94.

MR. SCHEIBLE: But you're not a daycare center?

MS. SPRAUER: No, all parents, when the kids come in they have to be with an adult, guardian or whatever, we're going to have a wristband system to make sure all the children leave with the adults they came with, there's security cameras in the whole place and the exits and whatever to alleviate any problem that way with the birthday parties they'll bring a certain number of kids in and certain number of adults, it may not be one-to-one as when the parents come in with them but--

MR. ARGENIO: This is your issue, Jen, as far as I'm concerned. You guys got any thoughts?

MR. EDSALL: Mr. Chairman, we looked at the parking calculations which is the only thing we ever look at for this situation it's because obviously they're taking only a portion of it, it's obviously is not an issue, so I would recommend that you refer it to the

building department for them to handle.

MR. ARGENIO: Essentially, if you take the counts for a retail establishment as opposed to the count to this for the same square footage is it still less for this?

MR. EDSALL: It's based on square footages and the other one's based on number of attendees so you have to have the numbers, they provided the numbers, it's a decrease and the rest of Eckert's is proposed for rental, we'll look at it then I'd refer it to the building department.

MR. ARGENIO: Go, Jen, it's yours.

MS. GALLAGHER: Okay.

DISCUSSION:

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RAY'S\_TRANSPORTATION

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MR. ARGENIO: I have received a letter and Dominic was copied on the letter today, I gave you guys a copy of the letter, Dominic called me about the letter when he got it, he received it before I did and I said I want to put it on as quick discussion item tonight so everybody especially you Henry he missed a couple meetings, you've been away so let's go ahead, Dominic, with what do you have?

MR. CORDISCO: Well, this is in regards to Ray's Transportation, just to bring the board up to speed at the last time that Ray's Transportation was before the board, actually, I wasn't here that night but the board did authorize me to write to DEC. We were looking to DEC to provide input because I was aware that the DEC had and New York State actually had made illegal creosote products, actually made illegal the manufacture, use or sale of creosote products in New York after 2008.

MR. ARGENIO: Let me intercede for a second. Henry, for your benefit, everything he said is correct, the thrust of the biggest concern of the board members at that meeting I think you were here, Howard was there, we were concerned with the runoff, the rain comes into the pile of creosote soaked railroad ties, does that creosote dissolve and go into the ground? Town has wells back there, as you know, that was the board's main concern. I think the comment that I made during that meeting was as far as the legal aspect goes, I really don't care about it, Dominic's got the deal with that and give yourself a decision, it will be left or right, I understand now we know it's one direction or another.

MR. CORDISCO: If I may, I wrote to the DEC and I

expressed not only that concern regarding the potential for contamination and that input as far as that was concerned and what permits may be required as a result of the activity that they're proposing but then I also asked whether or not they're proposing to do, is it legal under the New York law outlawing creosote and we got back a letter a couple days ago, we were copied on this and that's dated June 5 and that's from the Department of Environmental Conservation an attorney named Michael K. Russo who's an attorney in their Albany office and quite frankly this letter gave me a migraine headache because I tried to parse it and I think what I understand it to say there's three paragraphs. And the first paragraph more or less says that yes, Ray's Transportation is subject to the new law. The second paragraph says that storing railroad ties and shipping them off-site to locations outside of New York as Ray's Transportation is proposing to do because remember they have claimed that all of their customers are outside of New York. The second paragraph seems to say that and this is what it says actually that on its face does not violate the new law. And then the third paragraph goes on to say there might be a difference, however, as to whether or not Ray's is purchasing the ties or is being sold the ties. And that's it. So exactly what this means and whether or not there's a loophole here as to allow Ray's Transportation to operate in New York is kind of unclear but it seems to indicate that if there is a loophole then the DEC is reading a loophole into the law and our concern as the Town of New Windsor was that we did not want at least as far as I'm concerned from protecting the board as far as the legality of the approval we did not want to grant site plan approval for something that's an illegal use.

MR. ARGENIO: So what the letter does not say is it is illegal, it does not say that.

MR. CORDISCO: It does not say that and so and I think

it's up to the Department of Environmental Conservation to interpret their own laws and so we have not gotten a clear statement from them that what they're proposing to do here is illegal. And so I think we have to abide by their opinion then as to that. Now, this letter and to date no other response, we have gotten no other responses from DEC regarding the concern for ground water contamination which was the other part of what we were asking them, so they haven't responded on that at all. When we did write to the DEC, I did ask the question as to whether or not a SPDES permit for storm water runoff for industrial activities which is a heightened permit, it's more than your standard storm water permit that you deal with for construction activities, it applies for industrial activities whether or not that would be required. Mr. Rosenwasser, the attorney for Ray's, actually wrote following my letter acknowledging that they would have to obtain that permit coverage. So I think that even though we haven't heard from DEC, we have heard from the applicant that they acknowledge that they have to get coverage under SPEDES permit for industrial activity. At this point today we received a letter from Mr. Rosenwasser asking us, asking to be placed on the next agenda in light of the DEC's opinion regarding this use and then he goes on further to say that the site plan approval process should move forward and he doesn't believe that any issue relating to the need for SPDES permit is necessary at this time but can be dealt with by the DEC after this board grants approval. And that's not the customary practice for this board. Typically, if there's a storm water pollution prevention plan that needs to be prepared for coverage under SPDES permit those are site plan elements because you have a pond, you have detention areas, you have other physical features and it's been this board's practice to require that information up front so that you could see how it works in regards to the site. At this point, we don't have any additional information as well regarding the potential ground water contamination



that might result from the storage of railroad ties.

MR. ARGENIO: Or might not.

MR. CORDISCO: Or might not, I don't know. We just don't know. I went back and reviewed the file and we have a short form EAF. Now as you all know, a short form EAF is just the two pages and it asks in a conclusory manner are there going to be any potential impacts to ground water resources and the, you know, when you're dealing with short form EAF you say yes or no, but you don't provide any analysis. My recommendation would be that a full or long form EAF would be appropriate because that has a lot of questions that go into potential for various different forms of environmental impacts, including a number of detailed and pointed questions regarding ground water resources. I would recommend at this point to the board that you authorize me to contact Mr. Rosenwasser and advise him that the application requires a long form EAF and also a submittal of a storm water pollution prevention plan.

MR. ARGENIO: Mark?

MR. EDSALL: Mr. Cordisco and I have discussed the technical aspects, some of which were included in his very concise explanation and are in a hundred percent agreement.

MR. ARGENIO: I have a question. Will that yield us an answer to the question that this board is wrestling with on this application?

MR. CORDISCO: Regarding ground water?

MR. ARGENIO: Yeah, ground water contamination?

MR. CORDISCO: Well, it's hard to say.

MR. ARGENIO: I shouldn't say, well, the potential for ground water contamination.

MR. EDSALL: Our office has reviewed other industrial SPDES permits, storm water SWPPP for operations that require this level of storm water analysis above a normal construction related activity and it is a much more defined review, I think it's very appropriate that you consider that as part of your site plan. And I think the industrial storm water pollution prevention plan in conjunction with the full EAF and a site plan that addresses for this board how they handle the issue at least gives you the ability to consider the issue, whereas at this point, you've got no information. So as to whether or not you can reach a conclusion, I'd say wait till you have the all the information but you'll at least have the tools to discuss it. Right now, you have I would say at this point I would feel very uncomfortable recommending that at part of your site plan deliberations you consider a negative dec because it would be difficult to determine if there's a serious impact from the site cause you've got no information to work with.

MR. ARGENIO: I just want somebody smarter than me to tell me that it's okay or it's not okay. You guys any thoughts?

MR. SCHEIBLE: I mean, I was listening, right or wrong, when you read that letter I didn't get a chance to read that letter about it, seems to be a contradiction in there, loaded with contradictions.

MR. ARGENIO: Read that letter on your own time cause you're right it goes like this.

MR. CORDISCO: That's why I had a migraine.

MR. SCHEIBLE: I can see that I'm just listening to you, I didn't read it yet.

MR. ARGENIO: You guys agree with my statement or disagree?

MR. BROWN: I agree.

MR. ARGENIO: You've been here, you've made all the meetings.

MR. GALLAGHER: I agree.

MR. SCHLESINGER: I agree. I have a question relative to what Henry just said, I didn't do well in Business Law 101 but if I remember relative to what you said they didn't say that it was illegal, what's the terminology to say one thing doesn't imply another, they didn't turn around and say that it was legal, so that's part of your migraine.

MR. CORDISCO: Yeah, that's part of it, I mean, from my point of view and of course my opinion doesn't really matter in this case, from my point of view, the New York State Law says that it's illegal after January 1, 2008 and I'm quoting, manufacture, use or sell creosote products in New York State. Now, their argument is that their clients are all outside of New York State and so that makes it legal, you know, I think, you know, I mean, there's a number analogies that you can use.

MR. ARGENIO: Let me tell you something, you need to be careful of the bear whose tail you get ahold of, I mean, I don't want to go to the State Supreme Court here on this. I want to protect the town's interest, that's why I focused on the storm water thing because it could be an issue.

MR. CORDISCO: And as I said, my concern was is that we don't want to be granting approval for an illegal use, we've gotten an answer from the DEC that seems to read

that it's not an illegal use and I think we have to abide by their opinion.

MR. ARGENIO: Correct, I agree with that.

MR. BROWN: Is Ray's right now over on Caesars Lane are they handling creosote products?

MR. ARGENIO: That's a different discussion and I think the answer to that is yes, I think it is, I don't know that for sure but I think it is, there are some issues down there that DEC went in. Go ahead, Mark.

MR. EDSALL: Go ahead, after you're done.

MR. ARGENIO: DEC went in and raised a bit of a ruckus and Jen's office submitted some violations and I understand that they stopped operating or they did something to appease DEC, people got all frothed up I guess and I don't know whether that's a good answer to your question but it's as much as I know.

MR. EDSALL: Relative to the application that's before the board and the issue of reviewing the SWPPP associated with the site just for the record a reminder that New Windsor is an MS4 community and was required by the New York State Department of Environmental Conservation to adopt storm water regulations and has enforcement not only a review responsibility but enforcement responsibility. DEC has reminded us of our legal obligations, meaning the town on more than one occasion to properly review and properly enforce the local law that was mandated upon the town. If the town does not work in compliance with those regulations in effect the town is in violation.

MR. ARGENIO: Now we'll get cited.

MR. EDSALL: We can, absolutely, so I would suggest to the board that since there are only two mechanisms to

review SWPPP in the structure of the town operation either through the building department or through the planning board, it's preferable to do it with the planning board since you're reviewing the site plan., Jen's office only reviews SWPPP applications for sites that do not have an application before the planning board. And candidly, she's made it clear to me she'd probably rather not get involved at all, so hopefully they all go through the planning board but this is the appropriate venue.

MR. CORDISCO: On that point, Mr. Chairman, members of the board, Mr. Rosenwasser says that the SWPPP issue can be dealt with with DEC after this board's approval but the DEC has recently changed the rulings and now actually in order to submit your application to DEC you're actually required, an applicant is required to obtain town certification that the SWPPP has been reviewed and meets all the local and state standards.

MR. ARGENIO: This is the board, from that board that gives that?

MR. CORDISCO: Yes.

MR. EDSALL: It comes from an appointed position within the town that's currently being worked out but obviously, it's so much hand-in-hand with the site plan, I think it would be absolutely improper to segment the two reviews.

MR. ARGENIO: I'm going to go around the room, does everybody in essence agree with Dominic's initial diatribe?

MR. SCHEIBLE: I agree with it.

MR. BROWN: Yes.

MR. GALLAGHER: Yes.

MR. ARGENIO: We're in agreement then that's the way we're going to proceed.

MR. CORDISCO: If you would have a motion authorizing me to write a letter.

MR. ARGENIO: I'll accept a motion that Dominic, we authorize Dominic to write that letter that he discussed and I'll review it.

MR. SCHLESINGER: So moved.

MR. GALLAGHER: Second it.

MR. ARGENIO: Motion has been made and seconded that we authorize the attorney to write the letter to Mr. Rosenwasser.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BROWN	AYE
MR. SCHLESINGER	AYE
MR. GALLAGHER	AYE
MR. ARGENIO	AYE

ASPHALT\_CURBING

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MR. EDSALL: You asked me to bring up the issue of a problem as it may be that developed on the code review or the site compliance review prior to a C.O. with Jen's office for a project where they were installing asphalt curbs. The plans as approved by the planning board did not include any details nor in any location where asphalt curbs were called out. The applicant has since decided he felt it's in the project's best interest to utilize an asphalt curb in lieu of the concrete curbs which were detailed on the plans. It raised quite an interesting discussion between our office, our field reps and the developer and you had asked me to bring that forth tonight.

MR. ARGENIO: Bottom line is this. One of the buildings up at First Columbia across the street from Mark's office plans showed concrete curb because that's what the town requires in parking lots because over the years even my predecessor, Jim Petro before me, insisted on as well and I agree with him from a constructability point of view, you know, the business what happens after a couple three years the asphalt curbs end up in the snow pile at the end of the parking lot. Owner puts in blacktop curbs, tells Mark they're great, Mark says they're not going to talk about it, bring it to the board members, tell them unless somebody is digging in they have to put concrete curbs in which is what's shown on the plan. Do you guys agree? So I asked Mark to bring it up.

MR. SCHEIBLE: No deviating from what's in the plan.

MR. ARGENIO: Do you have your directions?

MR. EDSALL: So you're affirming not only for this application but even at workshops the board has made a determination that's an inappropriate construction method?

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MR. ARGENIO: On site plans, unless there's some anomaly.

MR. EDSALL: I haven't found one.

MR. ARGENIO: Thank you.



CONSTRUCTION\_PROPERTIES\_(ARGENIO)\_(09-20)

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MR. ARGENIO: Last item Construction Properties Inc. represented by Mr. Shaw. Keeping with the standards we have set on this board, I'm going to leave not only the room but I'm going to leave the building so you guys have a good night.

(Whereupon, Chairman Argenio left the room.)

Mr. Gregory Shaw of Shaw Engineering appeared before the board for this proposal.

MR. SCHLESINGER: Mr. Shaw, tell us why you're here.

MR. SHAW: Before I begin, with me tonight is Jerry Argenio, Sr. who's a principal in Construction Properties.

MR. SCHLESINGER: This is Mr. Jerry Argenio, Sr.?

MR. SHAW: Correct. So should you have any questions about the project or what's existing on the site he's the man to answer your questions too. I just have some notes I'd like to read into the record and then we can get into any questions the board may have. I think this is the layout that, the history of the property years back the planning board granted a special use permit to operate an asphalt plant on 4.0 acres in a PI zone off Ruscetti Road that being off Argenio Drive. Over the years, the use of this property expanded into recycling bituminous products that were left over from job sites along with other aggregates and producing them into sub-base material known as Item 4 which we use for driveways and parking lot surfaces. It served two purposes, recycled construction related materials and it created a product that was extremely limited in its natural state. The applicant approached Supervisor Meyers regarding the purchase go of 2.35 acres of the town's property which abuts the site designated in this

particular area this is 2.35 acres, due to the proximity of the site to the Ducktown area and the town's inactive wells in the town, he liked not to sell the property but to lease the property to the applicant and go through a three year wait and see process to basically see if there's any problems with the operation. After that three year period, the building inspector reported to the Town Board that there were no issues with respect to the recycling operation and also the DEC responded to the town that it had no issues. So, at that point, the applicant purchased the property from the town and the town agreed to sell it. And it was at that time that the applicant realized that the 2.35 acres needed a use variance as it was abutting an R-4 zone, not a PI zone and this is the line that separates the two parcels R-4 here and the four acre parcel being in the PI zone. In 2004, an application was made to the Zoning Board for a use variance and the variance was granted to allow recycling of construction related bituminous material and this was then followed by a lot line change incorporating the 2.35 acres from the town with the original four acres representing a total parcel area of 6.38 acres. Now the two parcels are merged, they're altogether. Over the past five years, the business of recycling has both changed and expanded because of the continued limited natural resources such as Item 4 and the need to reuse construction related material, agencies such as the DOT and the Port Authority required the reuse of construction related material. Concrete slabs and curbing are stored, reused as Item 4, glass is stored and reused as sand in the Item 4, topsoil is stored and screened for reuse also. The use of the site today is identical to that previously granted by the special permit, other than the fact that it does not primarily involve bituminous related material. This change in use certainly results in less of an impact on the site and the surrounding neighbors. I'd like to point out that in the town's comprehensive master plan the entire site is proposed for industrial use with the removal of

the residential connotation. The site is compliant with the town and the DEC permits and the recycling does not involve any solid waste. In summary, I'd ask the board to consider whether this use requires a new or amended special permit or whether the recycling of non-bituminous construction related material is less objectionable and thus does not warrant another special permit. So I have kind of gone through the whole history of the project and Jerry is here to answer any questions.

MR. ARGENIO, SR.: Very simply, we started out as an asphalt plant and from that a result of that is people who don't have to use up all their material bring it back to the site and dispose of it, it only makes sense then you get into the recycling, we got into the recycling of the construction related projects that expanded into concrete slabs producing Item 4. And this past year, the asphalt plant was taken down so now the primary use of the property is recycling of construction related materials and not the generation of asphalt plant. And we believe that with the special permit presently in place that that dealt with all these issues really the impact is less now than it was when the special permit was issued and just wrap a bow on it. Again, we have the use variance for the back piece and in the master plan this is all going to be zoned PI zone so it cleans it up considerably but we felt it was appropriate to come before the board to lay out the existing site conditions the plans for the site and ask for a site plan approval from you.

MR. SCHLESINGER: In essence, what you're doing being that you have already got an approval for a special use permit is in essence what you're doing you want to modify that a little bit?

MR. SHAW: Correct.

MR. SCHLESINGER: I have a question just for general

understanding you said that you don't produce asphalt anymore, is that correct? There was a change in the operation, can you just give me a heads up on that?

MR. ARGENIO, SR.: Prior there was located there an asphalt plant, the plant consisted of two very large 120 and 130,000 gallon tank of heated liquid asphalt, lot of confusion, asphalt is called blacktop and it's called technically bituminous concrete, that's what you call blacktop, there's two large insulated heated tanks, two fuel tanks, one with spec oil that's an oil that's re-processed oil that can be burned like fuel oil, another tank that had fuel oil in it plus a large structure which was used to incorporate mostly virgin materials, some non-virgin materials into this asphalt to concrete, that operation has been sold, the tanks are removed, there's no more fuel oil storage, no more liquid asphalt storage, there's no more plant doing that. But as Greg apply pointed out during the process of the operation of this some of the materials that were returned were recycled, recycled into other products and we have expended that to some degree recognizing that in today's world you can't just be blowing up mountains and crushing virgin materials, you have to try and reuse what you have. So we have developed where we have our related construction company and we'll bring in topsoil that's stripped from the job and it will get reused on another job or sold somewhere. In the past, it would fill a hole somewhere and be lost forever. And we do that with a lot of our other products now, we try and reuse our products as much as possible.

MR. SCHLESINGER: The asphalt operation and everything described, the tanks, the oil was picked up, moved and, sold to somebody else? You still own the property and the other day when I drove by I saw 15 trucks lined up, those trucks were picking up material that had been recycled some way or the other?

MR. ARGENIO, SR.: Probably not at my facility. You might have been seeing it at Tilcon, which is the adjacent facility. My facility there's much less truck traffic because we no longer, frankly the area's got the same traffic, the people who used to buy it from me are probably buying from Tilcon but they're not coming on an inch of my property anymore.

MR. SCHLESINGER: Just to get a better understanding.

MR. SHAW: Tilcon is right here.

MR. ARGENIO, SR.: He's right on Ruscetti Road.

MR. SCHLESINGER: Just to understand we're going to be getting items that were on the job, such as topsoil, such as concrete and items similar to that, they're going to come to your facility and they're going to be ground up, screened, blah, blah, blah, blah, blah, sold and used for Item 4 or whatever else?

MR. ARGENIO, SR.: Exactly, they're sold to someone else or reused by us on the property and frankly, I don't, I know we have a project right now at the Port Authority for the, they require that 70 percent of all the asphalt, all the concrete slabs, all the recyclable materials be taken to a facility and be recycled, not be wasted.

MR. SCHLESINGER: Mark, do we have any concerns about the materials that are being brought in or anything?

MR. EDSALL: No, let me just confirm, I won't repeat what Greg and Jerry indicated because they very clearly indicated the operation and it's on the record. I'm suggesting that it is in fact a B-3 special permit use now and the change that's proposed results in the same special permit B-3, it's just that they're doing quite a bit less of one item that they did on the site and they're doing more of another operation that they used

to do on the site. So they're effectively just modifying the types of uses but no new uses. And in fact, the impact as Greg indicated is decreasing because the fuel storage, the product on the site is less noxious, the truck traffic in fact is going to be decreased so the impact would seem to be less so I'm suggesting to the board that it's a modification to an existing special permit and in fact decreasing the impact.

MR. SCHLESINGER: Okay, but the permit use is still B-3?

MR. EDSALL: B-3.

MR. SCHLESINGER: How do we go about, what do we have to do?

MR. EDSALL: What they're doing to make sure there's no misunderstanding that they have gotten approval for this reorientation of the amount of each use they have made an application they're being very up front. What I am suggesting is the board acknowledge my suggestion B-3 3 to B-3 and the change in use having less impact and verify that that is in fact acceptable and not creating the need for a new special permit or in fact a public hearing because they are dramatically changing the existing special permit.

MR. SCHLESINGER: Referring to your notes number 3 we have to assume lead agency.

MR. EDSALL: Let's get one thing out of the way at a time, if you can for the record, I don't know if it's necessary to do that by resolution or the board being polled that they agree.

MR. CORDISCO: Sure.

MR. SCHLESINGER: All right, so then let's take a poll

of the board acknowledging what Mark has suggested that the special use permit B-3 be continued as a B-3 and that the applicant came before us and explained to us what exactly they're doing and in essence we confirmed that there is no significant changes and we go along with the B-3 permit.

MR. EDSALL: With that being acknowledged, the law requires that you have a public hearing for a new special permit, this is not a new special permit, I'm suggesting that there's, the code doesn't require nor does it seem appropriate to have a public hearing on something that in effect is decreasing.

MR. SCHLESINGER: Should we address the public hearing first?

MR. EDSALL: You have that public hearing and then there's the law allows for you to have a public hearing or it can be waived for a site plan. Now relative to the site plan they're proposing no new roads, no new buildings, no structures of any kind or in fact they have removed structures. The plant was actually a structure and was considered one, the piles of stockpiled material were always there, just a different material. So if that's the case, you could probably acknowledge no need for a special permit public hearing and consider waiving the site plan public hearing.

MR. SCHLESINGER: Let's take that one at a time. We're acknowledging the special use permit B-3, I myself personally don't see the purpose of a public hearing in regard to that issue. I will poll the board, Hank, what do you feel?

MR. SCHLESINGER: We're still R-4 in that one section there?

MR. SHAW: We're still R-4 with a use variance.

MR. SCHLESINGER: Since I really, yeah, R-4 is ridiculous up there anyway.

MR. EDSALL: I think that's slated to be rezoned in the new master plan.

MR. SCHLESINGER: I have no problem.

MR. BROWN: I have no problem.

MR. SCHLESINGER: I'll accept a motion that we waive the public hearing in regards to the special use permit B-3.

MR. EDSALL: No, for the site plan. You can't waive the special permit public hearing, you have deemed there is no need because there is no change but the site plan you're waiving.

MR. SCHLESINGER: Public hearing for the site plan waive it.

MR. GALLAGHER: So moved.

MR. SCHEIBLE: Second it.

MR. SCHLESINGER: Motion has been made and seconded. Roll call.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BROWN	AYE
MR. SCHLESINGER	AYE
MR. GALLAGHER	AYE

MR. SCHLESINGER: So the public hearing for the site plan is waived. Mark, what's the next thing we should address?



MR. EDSALL: Well, the one other item, the only other item we can do tonight is the board assuming lead agency.

MR. CORDISCO: There's no need, Mr. Chairman, for the board to circulate for lead agency because there's no other involved agencies as far as the approvals are concerned. So this board either you would just assume it, you have become lead agency, it will be an uncoordinated review and that's all that's required in this instance.

MR. SCHLESINGER: I'll accept a motion that the Town of New Windsor Planning Board assume lead agency under SEQRA.

MR. SCHEIBLE: So moved.

MR. BROWN: Second it.

MR. SCHLESINGER: Motion has been made and seconded. Roll roll.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BROWN	AYE
MR. SCHLESINGER	AYE
MR. GALLAGHER	AYE

MR. SCHLESINGER: I guess there's an issue as far as the proximity to 32.

MR. EDSALL: All good news for the applicant that you have been able to move through the process but unfortunately for the applicant, they are physically within 500 foot of a trigger for Orange County Department of Planning referral. It was referred over, we have not heard back yet, there is a mandatory 30 day waiting period, I don't anticipate any issues with them

but procedurally, you can't act tonight, it's just the way the law is. But you could authorize the attorney to prepare the resolutions so that once you receive the county report you can act.

MR. SCHLESINGER: So Dominic, do I have to do that via a vote?

MR. CORDISCO: If you do it by motion that would be fine.

MR. SCHLESINGER: Can I accept a motion that Dominic proceed with his work?

MR. SCHEIBLE: So moved.

MR. BROWN: Second it.

MR. SCHLESINGER: Motion made and seconded. Roll call.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BROWN	AYE
MR. SCHLESINGER	AYE
MR. GALLAGHER	AYE

MR. SCHLESINGER: So, therefore, in essence, we can't conclude anything further than what we have done so far until we hear from the Orange County Planning Department.

MR. EDSALL: And just again this application was as much on the borderline of needing to be made at all as anyone I've seen and we just should probably thank the applicant for being up front and not arguing do we need to make an application or not. They're just doing it so the record is clear.

MR. SCHLESINGER: We appreciate it, Mr. Argenio.

MR. ARGENIO, SR.: Thank all of you. As you know with Jerry we're a little sensitive and appreciative of the work that you people do and we don't want to in any way slight your oversight.

MR. SCHLESINGER: And the town appreciates that.

MR. SHAW: We'll be back in 30 days or less if we hear from Orange County Department of Planning whenever your schedule allows.

MR. SCHLESINGER: We'll let you know as soon as possible.

MR. ARGENIO, SR.: I think Mark we triggered that because of the flag, right?

MR. EDSALL: Yeah, any portion of the property.

MR. ARGENIO, SR.: I think if this, if we did not have this access and because this is the whole area this is what triggered it now 32 is over here.

MR. EDSALL: If the County Planning Department had not expanded their review authority by not renewing the ability for towns to consider minor actions you wouldn't be here either but the County Planning changed their scope.

MR. ARGENIO, SR.: Thank you all.

MR. SCHLESINGER: Motion to adjourn?

MR. GALLAGHER: So moved.

MR. SCHEIBLE: Second it.

ROLL CALL

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MR. SCHEIBLE	AYE
MR. BROWN	AYE
MR. SCHLESINGER	AYE
MR. GALLAGHER	AYE

Respectfully Submitted By:

Frances Roth  
Stenographer

